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Supreme Court, U.S.
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No. 99-

IN THE

Supreme Court of the United States

EDWARD M. DUMANIS and NADYA DUMANIS,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether petitioner was oppressed and abused at trial in the United States Tax Court by a judge who was biased against pro se litigants, in violation of petitioner's due process rights, and if so, whether this substantially affected the Tax Court's judgment against petitioner.

Whether a pro se litigant should be held to less legalistic and stringent standards at trial with respect to court rules and procedure and, in particular, what is the test or standard of compliance with court rules and procedure.

PARTIES TO THE PROCEEDING

Petitioners are Edward Dumanis and Nadya Dumanis, who are husband and wife. At trial in the Unites States Tax Court, it was Edward Dumanis who presented the case and Mrs. Dumanis agreed with everything he stated. For the purposes of clarity, the rest of this petition will refer to the petitioners as "petitioner".

Respondent is the Commissioner of Internal Revenue.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Second Circuit Court of Appeals in this case.

OPINIONS BELOW

The Second Circuit opinion (App. A) is reported at *Edward M., Nadya Dumanis v. Commissioner of Internal Revenue*, 182 F.3d 899 (2nd Circuit 1999). The United States Tax Court opinion is unpublished and attached at App. B and the order as App. C.

STATEMENT OF JURISDICTION

The judgment of the Second Circuit Court of Appeals was entered on July 7, 1999. The Court of Appeals entered an order denying a timely petition for rehearing and petition for rehearing en banc on February 4, 2000. App. D.

The jurisdiction of this Court is invoked under 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment to the United States Constitution as made applicable to the states by the Fourteenth Amendment.

The Fifth Amendment states in pertinent part: "nor shall any person . . . be deprived of life, liberty, or property, without due process of law".

STATEMENT OF THE CASE

Petitioner, Edward Dumanis, is a Russian born immigrant. He became a United States citizen in 1988. Since that time, he formed a business, Expert Quality, Inc., which mostly provides translation and interpreting services.

On February 28, 1997, Petitioner received a notice of deficiency from respondent. The notice disallowed in full several deductions on petitioner's 1993 and 1994 federal income tax returns. As the cost for an attorney was more than the amounts of the claimed deficiencies, the petitioner chose, as was his right, to represent himself. On his own, the petitioner timely filed a petition with the Tax Court contesting the notice of deficiency and respondent answered the petition.

On February 4, 1998, the Notice of Trial was sent to both parties to which was attached a Standing Pre-Trial Order of the Tax Court. The matter came to trial on April 27, 1998 before the Hon. Robert N. Armen, Jr.

A. Proceedings Below

At the trial of the case, petitioner appeared pro se. The trial judge, a former IRS prosecutor, ruled early in the trial that much of petitioner's evidence would not be admissible due to the fact that petitioner had not complied with the court's standing pre trial order, which dictated that all documents being used at trial must be turned over to the other party at least 15 days before the trial session. Petitioner was also frequently admonished by the judge throughout the trial for failing to comply with court orders and procedure. Petitioner was also not heard on several key issues during the trial. Due to these factors, petitioner was unable to present most of his evidence to prove his case.

Consequently, in a decision entered May 12, 1998, the Tax Court sustained the respondent's deficiency determinations. App. B at 8a.

Petitioner appealed the decision of the Tax Court to the Second Circuit Court of Appeals, pursuant to 26 U.S.C.A. § 7482. The main arguments of petitioner's brief were that:

(1) The Tax Court should have applied less stringent standards in dealing with a pro se litigant;

(2) The Tax Court denied petitioner his procedural due process rights at trial; and

(3) the Tax Court Judge was biased against the pro se petitioner.

The Second Circuit Court of Appeals, in a summary order, affirmed the Tax Court judgment which was being appealed by the petitioner. App. A at 1a.

Petitioner thereafter filed a petition for panel rehearing and a petition for rehearing en banc.

By order, dated February 4, 2000, the Second Circuit Court of Appeals denied the petition for panel rehearing and petitioner for rehearing en banc. App. D at 35a.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND WITH PRIOR DECISIONS OF THE SECOND CIRCUIT REGARDING:

BIAS OF THE TAX COURT JUDGE AGAINST THE PRO SE LITIGANT

The decision of the Second Circuit cannot be reconciled with various decisions of the Supreme Court and with prior decisions of the Second Circuit, as well as other circuits involving the same issue.

Taylor v. Hayes, 418 U.S. 488 (1974), applies to the instant case regarding a disinterested and fair tribunal. In *Taylor*, this Court examined the attitude and bias of a trial judge in relation to his conduct at trial towards the defense counsel, whom the judge repeatedly charged with contempt of court. This Court noted that "as the trial progressed, there was a mounting display of an unfavorable personal attitude towards petitioner, his ability, and his motives, sufficiently so that the contempt issue should have been finally adjudicated by another judge." *Id.* at 501.

Additionally, in *Marshall v. Jerrico*, 446 U.S. 238 (1980), this Court also emphasized how "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Id.* at 242.

A. The Judge's Attitude and Treatment of the Pro Se Petitioner

In the case at bar, the Second Circuit ruled that it sees "no basis for inferring that the tax court judge was biased against petitioner." App. A at 2a. Such an assertion cannot be reconciled with *Taylor* or *Marshall*.

A thorough reading of the trial transcript makes it abundantly clear that the tax court judge was biased, oppressive, argumentative, and demeaning towards the pro se petitioner. The judge curtailed the free flow of arguments, as well as any possibility of a fair trial or an impartial and disinterested tribunal to which petitioner is entitled. *See Marshall*, *supra*, 446 U.S. at 242 (1980). For a pro se litigant, a trial itself is usually an intimidating and daunting experience, even with a helpful and pleasant judge. It is even more intimidating with an oppressive and hostile judge, especially for the petitioner, who was not born and raised in the United States, and whose command of the English language is very certainly inferior to that of a native speaker of English.

Petitioner's original brief to the Second Circuit cites the countless rude and sarcastic remarks made by the trial judge to the petitioner. (Pet'r Br., pp. 27-29; J.A., pp. 31-33, 36, 37, 49, 56, 57, 60, 61, 63, 64.) The Second Circuit, ignoring the rude and sarcastic comments, attempted to explain some of the cited colloquy as "instances in which the court had asked a specific question and Dumanis commenced a statement that was not responsive." App. A at 2a. The Second Circuit either ignored or clearly misapprehended those remarks. A tax court judge should not be making sarcastic comments, nor should he be asking sarcastic questions, to a

pro se litigant, because sarcastic questions may be interpreted as requiring a response not to the actual question, but rather to the source of the sarcasm.

At no time during the trial did petitioner give a non-responsive answer to any question posed to him. Furthermore, even assuming, *arguendo*, that the tax court judge tried to elicit a responsive answer from petitioner at some point, it does not explain, or excuse, why the judge demeans and makes fun of petitioner's lack of understanding trial procedure. It is incomprehensible how the trial in tax court can be considered fair and impartial in light of the flippant and offensive remarks from the tax court judge. These remarks facilitated the oppressive nature of the trial to such a point where petitioner believed it was useless for him to even offer any more of his evidence to prove his deductions, because the judge would just refuse to admit it.

Any judge or attorney, familiar with the conduct of trials, cannot help but be shocked by what occurred at the trial in tax court. Of great significance is the fact that petitioner was completely alone when appearing at trial. He had no attorney, nor any help, in defending himself against the onslaught of oppressive and demeaning remarks from the tax court judge, a former IRS prosecutor. The conduct of the tax court judge below cannot possibly be considered the impartial and disinterested tribunal to which the pro se petitioner is entitled. *See Marshall*, *supra*, 446 U.S. at 242.

Incredibly, the decision of the Second Circuit does not address petitioner's arguments concerning the record of the trial court judge, Hon. Robert N. Armen, Jr., in ruling against pro se litigants (in 26 published pro se cases, the judge always ruled in favor of the CIR, except for *one case* (for an

insignificant amount). His record clearly shows the prejudicial effects of the pro se cases before him and the resulting likelihood of bias against pro se litigants. (Pet'r Reply Br., pp. 13-14.) The Second Circuit's decision failed to even address this issue.

Arguably, any one of the judge's remarks cited in petitioner's brief, standing alone, may not, to the objective reader, be so shocking as to infer bias. However, *all* of the rude and sarcastic remarks, which occurred throughout the trial, *made to a pro se litigant*, and coupled with Judge Armen's record with pro se litigants, cannot possibly be construed as anything but bias on the part of the tax court judge. *See Taylor*, *supra*, 418 U.S. at 501-504; *Stivers v. Pierce*, 71 F.3d 732, 741 (9th Cir. 1995). The judge literally bullied and hurried the petitioner through very critical issues in the trial to such an extent that petitioner was completely persuaded that it was useless for him to offer any more of his evidence. (Pet'r Br., p. 20.) In light of the judge's attitude and comments, petitioner had absolutely no chance of receiving a fair trial, let alone in succeeding in proving his case.

When examining the trial itself, coupled with the record of Judge Armen ruling against pro se litigants, bias is no longer a question, but a certainty. As a result, petitioner has been denied his Fifth Amendment right to a fair and impartial tribunal. *See Marshall*, *supra*, 446 U.S. at 242; *Taylor*, *supra*, 418 U.S. at 501-504; *Stivers*, *supra*, 71 F.3d at 732.

B. Prejudgment of the Issues by the Tax Court Judge

Most importantly, the decision of the Second Circuit does not address petitioner's argument that the tax court judge prejudged the issues.

The record is complete with numerous accounts showing that the judge prejudged several, highly critical issues (*e.g.*, the admittance of petitioner's Exhibit Three, discovery from respondent, whether the notice of deficiency was arbitrary and capricious, the correctness of the government's allowances.) Often times, this occurred before the petitioner is even heard, (J.A., pp. 60-61), or, incredibly, before any evidence is even submitted. (J.A., p. 40.)

The case law is clear that such prejudgment may be demonstrative of bias, particularly when coupled with the rest of the trial itself and the surrounding circumstances (*e.g.*, Judge Armen's pro se record). *See Stivers*, *supra*, 71 F.3d at 741. However, the Second Circuit's decision fails to address these instances of prejudgment or offer any explanation as to how such instances can possibly be considered indicative of a fair and impartial tribunal.

C. Lack of Fundamental Trial Procedure

The Second Circuit also fails to offer any explanation for the outrageous lack of proper trial procedure facilitated by the tax court judge.

As shown in petitioner's brief, the judge hastily and improperly denies petitioner's motion for a continuance in order to subpoena witnesses, (Pet'r Br., p. 23; J.A., p. 21); the judge fails to give petitioner an opening statement but

does, however, give the respondent an opening statement, (Pet'r Br., p. 23; J.A., p. 37); the judge allows respondent to examine the official file of the court, but neglects to offer the petitioner the same opportunity, (Pet'r Br., p. 23; J.A., p. 30); and the judge fails to allow argument on whether or not the notice of deficiency was arbitrary and capricious, (Pet'r Br., p. 24; J.A., pp. 34-36.)

These are clear-cut examples of the unfairness of the trial in tax court and the outright bias of the trial court judge. These examples set the stage for the rest of the trial, leaving the petitioner oppressed, disillusioned, and disheartened. However, the Second Circuit failed to take this into account and offers absolutely no explanation for the judge's conduct in it's decision.

II.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND WITH PRIOR DECISIONS OF THE SECOND CIRCUIT REGARDING:

THE DENIAL OF A PRO SE LITIGANT'S RIGHT TO BE HEARD

The decision of the Second Circuit cannot be reconciled with various decisions of the Supreme Court and with prior decisions of the Second Circuit, as well as other circuits, regarding whether the pro se petitioner was denied a meaningful opportunity to be heard.

Haines v. Kerner, 404 U.S. 519 (1972), is a case directly on point. As with the case presented here, *Haines* concerned the rights and treatment of a pro se litigant. An inmate's pro se complaint became subject to a dismissal for failure to state a cause of action. This Court noted that the complaint of a pro se party is to be held "to less stringent standards than formal pleadings drafted by lawyers" and that "he is entitled to an opportunity to offer proof." *Id.* at 596.

This Court later affirmed the *Haines* case in *Estelle v. Gamble*, 429 U.S. 97 (1976), which also dealt with a pro se litigant whose complaint was subject to dismissal for failure to state a cause of action.

The decision below also conflicts with previous opinions of the Second Circuit. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90 (2nd Cir. 1993) concerned a pro se defendant who sought to vacate a default judgment against him (resulting from a failure to serve a timely answer). In reversing the default against the pro se defendant, the *Enron* court stated:

> [C]oncerns regarding the protection of a litigant's rights are heightened when the party held in default appears pro se. A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation, and trial judges must make some effort to protect a party from so appearing from waiving a right to be heard because of his or her lack of legal knowledge.

Id. at 96.

Additionally, in *Traguth v. Zuck*, 710 F.2d 90 (2nd Cir. 1983), a lower district court had entered a default judgment against Zuck, a pro se litigant, after he failed to comply with the court's directive, allowing the pro se litigant an extension of time to secure counsel for the purposes of responding to the complaint. Instead, the pro se litigant used that time to serve his own answer rather then employ counsel. The *Traguth* court reversed the district court's judgment, stating that it had "abused its discretion in failing to take into account Zuck's pro se status" and that the court had an obligation "to make reasonable allowances to protect pro se litigants from their inadvertent forfeiture of important rights because of their lack of legal training", and that the right of self representation "should not be impaired by harsh application of technical rules." *Id.* at 95.

A. The Pro Se Petitioner was Denied the Right to be Heard on Specific Issues

In the case at bar, the Second Circuit decision cannot be squared with the above mentioned cases.

The Second Circuit's decision states that "the right of *pro se* litigants to be heard does not imply a right to oral argument on all legal questions" and that "[t]he record does not support the proposition that the tax court refused to allow petitioners to present necessary arguments that were properly proffered." App. A at 3a.

It was *never* the position of petitioner that he should be heard on *all* legal issues. Quite the contrary. Petitioner merely pointed out that, given his pro se status, the court below should have given him the chance to be heard on very specific and extraordinarily determinative issues. *See Enron Oil*

Corp., *supra*, 10 F.3d at 96; *Traguth*, *supra*, 710 F.2d at 95; *Eagle Eye Fishing Corp. v. U. S. Dept. of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994); *Logan v. Zimmerman Brush Co.*, 445 U.S. 422, 437, 102 S. Ct. 1148, 1158 (1982).

1. The Denial of an Opportunity to be Heard on The Notice of Deficiency

Of particular importance during the tax court trial was the issue of whether or not the notice of deficiency was arbitrary and capricious. On this issue, the tax court utterly failed to give petitioner a chance to be heard, a chance to establish the notice as arbitrary and capricious, and thereby shift the burden to the government to prove otherwise. *See Portilo v. Commissioner*, 932 F.2d 1128, 1133 (5th Cir. 1991); (Pet'r Br., p. 24; J.A., pp. 34-36.) Clearly, this was a necessary and essential argument at the trial below, and petitioner should have been given the right to be heard at least on this one, critical legal issue. The tax court below, however, failed to give petitioner the chance, and the Second Circuit has simply ignored the issue in it's decision.

2. The Denial of an Opportunity to be Heard on Showing Good Cause

The tax court also failed to give petitioner any opportunity to show good cause for his 300 toll receipts. The court had found them non-admissible under the standing pretrial order. It is abundantly clear from the comments of the tax court judge that he simply did not want to take the time to hear petitioner on this issue: "Now, we are not going to sit here and go through 300 receipts." (J.A., p. 57.) Such comments by the judge are blatant denial of petitioner's constitutional rights. Petitioner had the evidence to prove his case but was flatly denied the chance to present it or be heard.

In these instances, the conduct of the tax court is *not* demonstrative of the meaningful opportunity to be heard guaranteed all pro se litigants. *See Eagle Eye Fishing Corp., supra*, 20 F.3d at 506; *Logan, supra*, 445 U.S. at 437; *Enron Oil Corp., supra*, 10 F.3d at 96. Indeed, the tax court's conduct (*e.g.*, the failure to hear petitioner's arguments, the sarcastic remarks) created an outright demeaning and oppressive atmosphere for the pro se litigant, a recent immigrant from Russia. The oppressive nature of the trial reached such an extent that petitioner was persuaded that it was useless to offer any further evidence or even to speak at times. Such an oppressive attitude from the court would frighten even the most experienced trial attorney. It clearly disheartened and discouraged the pro se petitioner. Yet, the Second Circuit has simply ignored this outright violation of petitioner's right to be heard, as well as its previous decisions on this issue, and those of this Court.

B. The Standing Pretrial Order

The decision of the Second Circuit also discusses petitioner's failure to comply with the standing pre-trial order. The decision makes one particular statement which shows beyond a doubt that the Second Circuit overlooked what occurred at the trial court below, and that it failed protect the rights of the pro se petitioner. *See Enron Oil Corp., supra*, 10 F.3d at 96; *Traguth, supra*, 710 F.2d at 95.

The Second Circuit's decision states in part:

> [T]he tax court indicated that it would allow petitioners to introduce documents as counsel for the Commissioner had already seen; petitioners do not dispute that they had in their possession at

> trial a copy of the Commissioner's entire administrative file. Thus, the tax court offered to excuse petitioners' default in part. To the extent that the tax court otherwise enforced the pretrial order, it did not deny petitioners a fair trial.

App. A at 3a.

The Second Circuit was in error because: (1) it never examined whether there had actually been a default; and (2) whether the tax court followed up on its offer. Importantly, the Second Circuit committed the same mistake as did the tax court at trial. *It never follows up on the tax court's offer to excuse petitioner's default.* The tax court judge states that if a document was currently in respondent's counsel's files, "then there has obviously been an exchange of documents." (J.A., p. 70.) Yet, the court never follows up on this offer. It never asks petitioner, or respondent's counsel, then and there, what documents of petitioner were in respondent's counsel's file. The tax court, and the Second Circuit, should have made some effort to protect the rights of the pro se litigant on this issue.

Moreover, the Second Circuit has failed to take into account respondent's counsel's conduct on this issue and its negative impact on petitioner. Immediately prior to the court's offer, petitioner had offered into evidence Exhibit Three (a list of dates and client ID numbers used during a previous audit), (J.A. p. 48), as well as Exhibit Four (a computer toll summary), (J.A., pp. 66-67). Petitioner then listened to respondent's counsel deny that he had ever seen them. (J.A., pp. 48, 66-67.) Petitioner had personally seen these documents in the hands of respondent's counsel well in advance of trial. (J.A., p. 47.) At that point, petitioner,

completely disheartened by all of the oppressive conduct which preceded this specific incident, felt any further offer of his evidence (specifically, two bankers boxes of documents) was pointless and useless because he knew respondent's counsel would simply deny previously seeing those documents as well. Note that it was not until the end of the trial when respondent's counsel suddenly remembers seeing Exhibit Four prior to trial: "Your Honor, I believe there is a similar summary in the administrative file." (J.A., p. 118). After offering to excuse petitioners default, the tax court should have ascertained, *during the trail*, rather than at the end, which of petitioner's documents were previously in respondent's counsel's possession. However, the tax court failed to do so, clearly showing to the pro se petitioner that it was pointless to attempt to submit any further evidence, and thus most of petitioner's evidence was never admitted. (Pet'r Br., p. 20.)

Additionally, one particular sentence of above mentioned excerpt of the Second Circuit's decision, reveals that it made another crucial error in apprehending what exactly the tax court offered petitioner. The Second Circuit's decision stated "the tax court indicated that it would allow petitioners to introduce documents **as counsel for the Commissioner had already seen**". (emphasis added), App. A at 4a.

The Second Circuit failed to realize that not only did the lower court offer to allow petitioner to introduce documents that respondent's counsel had already seen, it offered to allow petitioner to introduce documents that *respondent* (Commissioner of Internal Revenue) had seen as well. The lower court declared at trial: "If respondent has already seen them, if they had been in Respondent's possession before, that may perhaps be another matter. We would have to take that up and see what the situation is." (J.A., p. 70.)

Yet, the lower court *never* follows through on this offer, it never bothers to ascertain which of petitioner's documents may have been in the possession of the respondent. A simple half hour adjournment, after the court's offer, would have been all that was needed. Certainly, a pro se litigant cannot possibly be expected to know that he would have been entitled to such an adjournment, or to speak up in such an oppressive atmosphere as created by the lower court.

As the Second Circuit held in *Enron Oil Corp.*, *supra*, 10 F.3d at 96, trial judges must make some effort to protect pro se litigants from waiving the right to be heard. Incredibly, the tax court judge utterly failed to do this. The judge never gave any indication that petitioner's entire case hinged on this exchange of documents. Petitioner received no warning, no awakening of the consciousness, no advisement from the judge, at any time, that his case was in jeopardy (as is clearly evident from the trial court's decision, App. B at 21a-22a, and that if he did not act immediately he might be waiving his rights. There is no doubt that the trial judge and the respondent's attorney knew exactly what the judge's decision would be in the case. The petitioner was clearly and outrageously "set up" for failure as the conduct of the trial shows.

Unequivocally, the Second Circuit misunderstood what occurred at trial, what the lower court offered to petitioner (and subsequently failed to follow up on), and what the lower court was required to do. The pro se petitioner was denied his constitutional right to be heard and to present his case.

The Second Circuit has also made another error committed by the trial court below, perhaps one of the most crucial. It never bothers to consider the pro se litigant's

alternate, layperson interpretation of the standing pretrial order. The Court's ruling that petitioner had not complied with the order essentially prevented petitioner from offering his evidence at trial. Contrary to the decision of the Second Circuit, petitioner *does* dispute that he failed to comply with the order. Petitioner's interpretation, as a layperson and pro se litigant, was certainly understandable. Respondent even admitted in his brief to the Second Circuit that other interpretations of the order are possible. (Resp't Br., p. 37, n.8.)

The Second Circuit has previously ruled that the right to self-representation should not be impaired by the harsh application of technical rules. *Traguth*, *supra*, 710 F.2d at 95. However, *that is precisely what occurred at the trial*, as the tax court's harsh, legalistic interpretation of the pretrial order prevented petitioner from offering most of his evidence to prove his case.

Petitioner interpreted the pretrial order to the best of his ability. As shown in petitioner's original brief to the Second Circuit, there was nothing unreasonable about petitioner's interpretations, especially in light of the fact that he is a layperson and naturalized citizen, not a native speaker of English, and was appearing pro se at trial. (Pet'r Br., pp. 15-18). According to previous decisions of this Court, the Second Circuit (and other circuits), the petitioner's pro se status, particularly in a tax case, must be considered when contemplating this issue; some latitude or leeway must be given. *See Enron Oil Corp*, *supra*, 10 F.3d at 96; *Traguth*, *supra*, 710 F.2d at 95; *Christenson v. C.I.R.*, 786 F.2d 1382, 1385 (9th Cir. 1986)), *Estelle*, *supra*, 429 U.S. at 106; *Haines*, *supra*, 404 U.S. at 520.

The Second Circuit completely ignored the oppression faced by petitioner as he attempted to prove his case in tax court. The trial judge inexcusably failed to apply the necessary latitude and less stringent standards in dealing with a pro se litigant. The Second Circuit utterly failed to do this as well, and it's decision is in direct conflict with it's previous rulings on this issue, as well as those of this Court. A petition for writ of certiorari is, without a doubt, warranted.

THE ISSUES PRESENTED ARE IMPORTANT, WITH FAR REACHING IMPLICATIONS

The Second Circuit has sent a conflicting message to the petitioner, and indeed, to pro se litigants everywhere.

At trial in the tax court, petitioner attempted to present his case, submit his proof, and comply with court orders and procedure. The tax court consistently failed to take into account petitioner's pro se status, and abused its discretion in failing to allow petitioner to be heard, or even make himself understood. Petitioner was, after all, a layperson and not a native speaker of English, and yet he was held to the higher standard of an experienced trial attorney. He was effectively denied his due process rights as he was not heard on several critical issues at trial. Petitioner had the evidence to prove his case but was prevented from offering it.

The Second Circuit's decision blatantly conflicts with its own prior decisions and with that of this Court. As shown, it has completely overlooked the abuse and oppression petitioner was subjected to at trial. By it's decision, the Second Circuit has now sent a message to each and every Untied States citizen that their rights may not be protected should they choose, as is their right, to represent themselves in court.

Petitioner is an immigrant and now a United States citizen. The decision of the court below has shaken his belief in the legal system of the United States. By affirming the decision of the tax court, the Second Circuit has essentially washed its hands of petitioner's case. It reviewed what occurred at trial and, by it's decision, has essentially implied that it does not care if pro se litigants are abused and oppressed in court.

Petitioner came to the United States with the belief that the rights of all its citizens are protected, particularly in courts of law. Justice warrants that he be afforded his Fifth Amendment rights, which have been denied him by the courts below.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari must be granted.

Respectfully submitted,

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